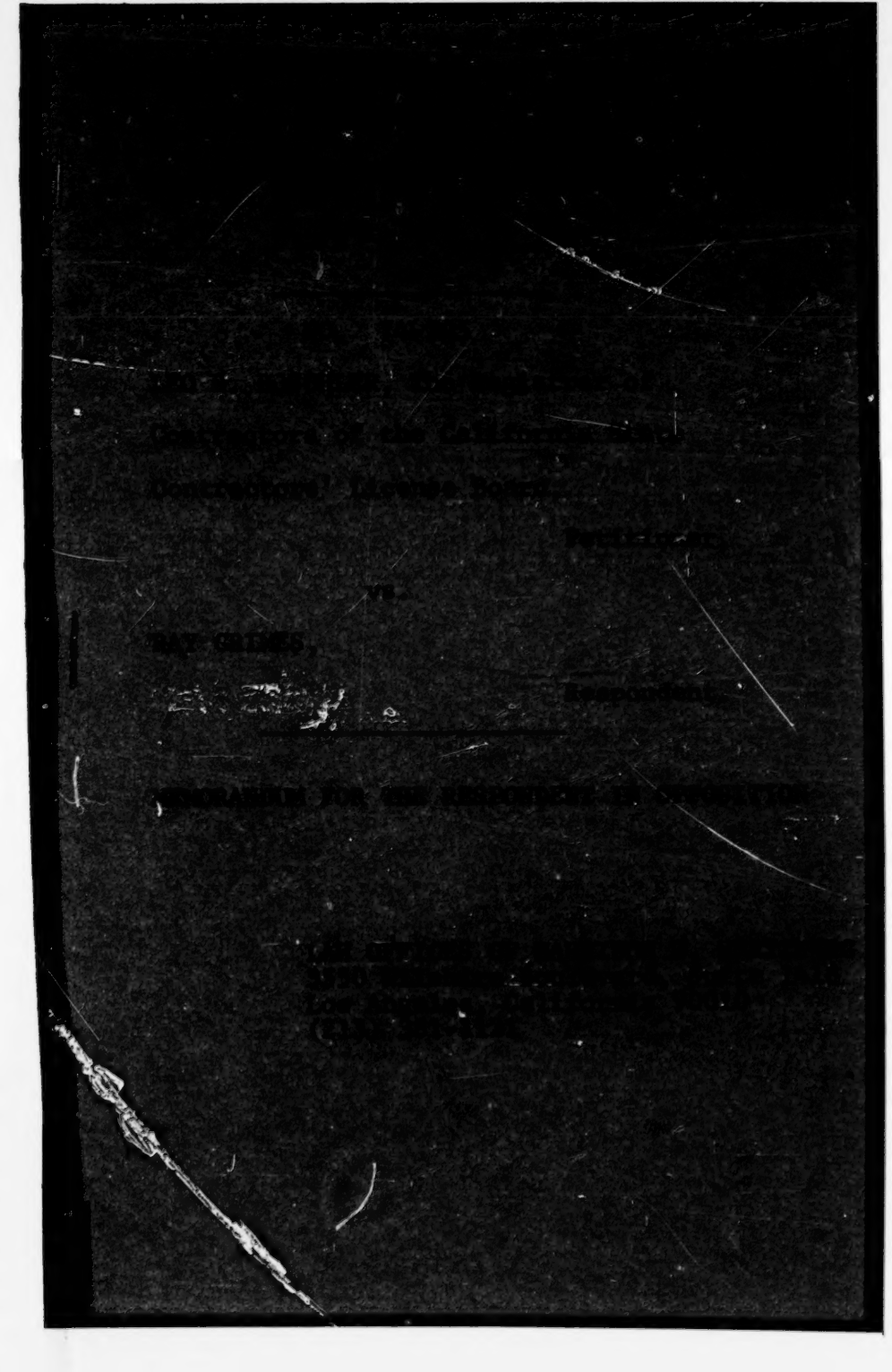

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

NO. 74-705

LEO B. HOSCHLER, The Registrar of Contractors of the California State Contractors' License Board,

Petitioner,

vs.

RAY GRIMES,

Respondent.

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner contends that the Supreme Court of California improperly relied on this Court's decision in Perez v. Campbell (1971) 402 U.S. 637.

Petitioner attempts to distinguish this case from the Perez principle in that a bankruptcy discharge does not automatically result in a disciplinary adjudication against a licensed contractor in the State of California, but merely permits a disciplinary proceeding to be filed against him.

However, both the statutes being challenged herein and their application to the facts herein speak otherwise. California Business and Professions Code Section 7113.5 provides as follows:

> "The avoidance or settlement by a licensee for less than the full amount of the lawful obligations of such licensee incurred as a contractor, whether by (a) adjudication in

bankruptcy .... constitutes a cause for disciplinary action."

California Business and Professions Code Section 7102 provides, in pertinent part:

"After revocation of a license upon any of the grounds set forth in this article, the license shall not be reinstated or reissued within a period of one year after the final decision of revocation and then only on proper showing that all loss caused by the act or omission for which the license was revoked has been fully satisfied ..."

In the instant proceeding, the accusation filed against respondent asserted "as a sole ground for discipline" a violation of Section 7113.5 in that by obtaining an

adjudication of bankruptcy, respondent avoided his lawful obligations incurred as a contractor. (See Supreme Court of California Opinion, petitioner's appendix page 1.)

Additionally, the Supreme Court of California found as a fact that the Registrar of Contractors, in his administrative hearing on the accusation, considered as evidence only that petitioner herein had been adjudicated a bankrupt and had discharged his debts incurred as a contractor for less than their full amount. The trial Court found this to be the sole cause for revocation of his license (Supreme Court of California Opinion, petitioner's appendix page 9).

1. Perez teaches us that the "effect" of state law is to be primarily considered in deciding whether a state statute is in conflict

with a federal statute and invalid under the Supremacy Clause of the Constitution. This Court, in Perez, overruled Kesler v. Department of Public Safety (1962) 369 U.S. 153, and Reitz v. Mealey (1941) 314 U.S. 343, wherein solely the "purpose" rather than the "effect" of state legislation was considered and such state legislation was upheld in that said "purpose" was not to circumvent the Bankruptcy Act. The Perez doctrine precludes state legislatures from nullifying unwanted federal legislation by establishing a "purpose" for the state legislation in furtherance of some state policy unrelated to the federal act. Regardless of the state policy or purpose, if the "effect" of the state law in fact frustrates a debtor's

avenue to the bankruptcy courts, that state statute cannot stand.

Perez lost his driver's license and vehicle registration for non-payment of a judgment resulting from an automobile accident. He was unable, under Arizona law, to reinstate his driver's license and auto registration even though he discharged the judgment in bankruptcy. Hence, the effect of the Arizona law was to bar the purpose of a "discharge in bankruptcy." Though the judgment creditor would have no recourse to collect his judgment, after bankruptcy discharge, in the Arizona courts, he had the state of Arizona standing by as his collector. That is to say, the "effect" of the Arizona law was, by a clever manipulation of words, a complete avoidance of the value of the Bankruptcy Act.

The State of California has accomplished the same result concerning contractors' licenses. Section 7113.5 of the California Business and Professions Code makes it "a cause for disciplinary action" for a licensed contractor to avoid the full amount of his lawful obligations, incurred as a contractor, by an adjudication in bankruptcy. Hence, in the instant proceeding, the statute of its face and as applied herein makes a bankruptcy discharge a cause for disciplinary action, without more. Secondly, Business and Professions Code Section 7102 makes it mandatory to repay the creditor as a condition to reissuance or reinstatement of the license.

A state contractor in California finds himself in no different position than an automobile driver in Arizona.

Neither can obtain a license until repayment of the debt, though both may have been adjudicated bankrupts. The "effect," then, is obviously no different. A citizen of Arizona would have been, prior to Perez, forced to pay the judgment creditor to obtain his driver's license and, thus, enable him to earn a living. A licensed contractor in California finds that the beneficial avenue of the Bankruptcy Act is unavailable to him for he must still repay the debts to continue his professional undertaking to earn a living.

2. Respondent contends that there is no federal question. If the State of California chooses to find that a state statutory scheme is in conflict with the United States Constitution, that is purely a question of state law. It is

only when the state extends its regulation into the area as to which the federal government has exclusive dominion and control that such state regulation is found to be in conflict therewith and struck down under the Supremacy Clause. However, where the state may give more protection to the supremacy of the federal laws than even the Constitution requires, we have no federal question. The United States Constitution and its authoritative decisions merely chart the course within which the state may regulate. Within that area, however, the state may regulate or not as it desires. For example, as in obscenity, see Miller v. California (1973) 413 U.S. 15, to the effect that a state is free to regulate so long as it does not transgress into the area of minimal Constitutional standards therein set

forth. The state may, if it desires, not regulate at all and leave its citizens free to see and read materials they choose. No different is the proscription of the Supremacy Clause of the United States Constitution. Here, the State of California chose to find that its state's statute was in conflict with that clause. It is not for this Court to instruct the State of California otherwise.

Respectfully submitted,

LAW OFFICES OF HARRISON W. HERTZBERG

By: /s/
HARRISON W. HERTZBERG

February 14, 1975.

AFFIDAVIT OF SERVICE BY MAIL

State of California)
County of Los Angeles) ss.

Nancy Hess, first being duly sworn, says: That she is and was at all times herein mentioned, a citizen of the United States and employed in the County of Los Angeles, over the age of eighteen years and not a party to the within action or proceeding; that her business address is 3550 Wilshire Blvd., Suite 1418, Los Angeles, California 90010, that on February 14, 1975, she served the within MEMORANDUM FOR THE RESPONDENT IN OPPOSITION on the Petitioner in said action or proceeding by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in a mail-box, sub-post office, substation, or mail chute regularly maintained by the Government of the United States at Los Angeles, California, addressed to the attorney of record for said Petitioner at the address of said attorney as follows:

Honorable Evelle Younger, Attorney General
3580 Wilshire Boulevard, Suite 800
Los Angeles, California 90010

(Affiant's signature)

Subscribed and sworn to before me
February 14, 1975.

Notary Public in and for said
County and State.